IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 234 of 1992

in

SPECIAL CIVIL APPLICATIONNo 2479 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL MANAGER

Versus

SHIVABHAI M PATEL

Appearance:

MR MR SHAH for Appellant

NOTICE SERVED for Respondents No. 1, 4 & 6

MR PRANAV G DESAI for Respondent No. 5

MR UA TRIVEDI, AGP for Respondent No. 7

CORAM : MR.JUSTICE R.K.ABICHANDANI
and

MR.JUSTICE M.C.PATEL

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. This appeal is directed against the order dated 7th April 1992 passed by the learned Single Judge in Special Civil Application No. 2479 of 1992 rejecting the petition as withdrawn while giving certain directions enabling the respondents - original petitioners to approach the State Government under section 69(3) of the Gujarat Town Planning & Urban Development Act, 1976 on the question as to whether construction of a telephone exchange building could be made in final plot No. 226 which was reserved for a "Central Market" under the Town Planning Scheme No. 9 of Vadodara.

2. According to the original petitioners, instead of using the land for a Central Market, the Corporation had given the land on lease to the Telecom Department for Telecommunication Exchange Building and this was in contravention of the Scheme. The learned Single Judge, observing that there was an effective alternative remedy available under section 69(3) of the Act to the original petitioners for approaching the State Government, directed the petitioners to make a reference under section 69(3) of the Act to the State Government and the Government was directed to decide the same in eight weeks. The order issuing such directions has been challenged in this appeal by the General Manager, Telecommunication Office, Vadodara.

3. It was contended on behalf of the appellant that admittedly, the land bearing final plot No. 226 of the said Scheme was reserved for a Central Market. Therefore, it could be used for any public purpose for which an arrangement could be made of providing suitable amenities in such central market. It was contended that only an area of 4,000 sq. mtrs. was leased out to the appellant by the Corporation out of the total area of 21,629 sq. mtrs. of the said final plot No. 226. The land was given on lease for a period of 99 years. Such a user was in consonance with the purposes for which the final plot was reserved under the Scheme and therefore, there was no question arising for any reference under section 69(3) of the Act. The final plot No. 226 was admittedly reserved for its use for public purposes for which central market was to be established in that area. Admittedly, a central market would have every amenity that can be made available for the public. In paragraph

2 of the petition, the original petitioners have stated; "According to the regulations of the Vadodara Municipal Corporation and Vadodara Urban Development Authority, Central Market has been clarified as market where each and every amenity can be made available and that is kept for the public purpose only. It is the intention and object of the legislature to provide the amenity to the people at large from one place and that is why the land bearing final plot No. 226 had been marked and approved as Central Market." The grievance of the original petitioners is that, if a portion of this plot was to be used for the purpose of putting up a telephone exchange office, that would amount to using the land for a purpose different from the one for which the land was reserved and such a course would require a variation or change in the scheme as per the provision of section 70 or 71 of the said Act as may be applicable.

4. The question that is raised is, whether a portion of the final plot No. 226 which was reserved for providing public amenities under the head "Central Market" could have been utilized for the purpose of putting up a building for the Telephone Department for telephone offices. The word `amenity' is defined in section 2(ii) of the said Act and it, inter alia, includes public works and other utility services and conveniences. Telecom service is a service provided to the public and therefore, when a portion of the land reserved for `Central Market' is used for providing such amenity or convenience to the public, it cannot be said that there is any variation or change in the use of the land.

5. This very question as to whether an area which was earmarked for `sub-centre' in a Town Planning Scheme of Surat could be put to use for a Telephone exchange or Bank offices or Indian Oil Corporation Office was considered by us in Letters Patent Appeal No. 576 of 1999 and a cognate matter, and this Court on 27th March 2001 held that such a user did not amount to any variation or change in the use of land which was reserved for any of the public purposes for which activities could be carried out in any commercial centre. For the reasons which we have given in that judgement, it is clear to us that there will be no scope for directing any reference to be made under section 69(3) of the Act to the State Government in such a case, because, the use to which the land in question was being put was perfectly within the ambit of the public purpose of having a "central market" to provide amenities and conveniences to the public as contemplated by sub-section 40(3)(e) of the said Act.

The impugned directions cannot therefore be sustained. The order of the learned Single Judge to the extent that it gives directions for making a reference and directs not to put up the construction till the reference is decided, is therefore hereby set aside and the petition stands dismissed without such directions. The appeal is accordingly allowed with no order as to costs.

MARCH 29, 2001 [R.K.ABICHANDANI, J.]

[M.C.PATEL, J.]

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